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UNITED STATES DISTRICT COURT
DISTRICT OF CENTRAL CALIFORNIA

Mark Gage,

Plaintiff,

v.

Minus Multimedia GmbH; Richard Hawtin, an
individual; Gavin Lynch, an individual; and
DOES 1-25, inclusive,

Defendants.

Case No.: 2:15-cv-02450

**COMPLAINT FOR COPYRIGHT
INFRINGEMENT**

COMPLAINT FOR COPYRIGHT INFRINGEMENT

Plaintiff, by his attorneys, for their complaint against Defendants, and each of them, allege:

PARTIES

1. Plaintiff Mark Gage (herein "Plaintiff") is an individual residing in the State of New York with his principal place of business in the State of California.

1 2. Plaintiff is informed and believes that Defendant Minus Multimedia GmbH is a company
 2 with principal offices located in Berlin, Germany and Windsor, Canada organized under
 3 the laws of the Federal Republic of Germany and Canada (referred herein as “Defendant
 4 Minus”). Defendant Minus regularly does business in the United States, including inside
 5 the United States District Court for the Central District of California (the “District”) and
 6 the State of California.

7 3. Plaintiff is informed and believes that Defendant Richard Hawtin (herein “Defendant
 8 Hawtin”) is a resident of the Federal Republic Germany, including residences known to
 9 Plaintiff in Berlin, Germany and secondary residences in New York City, New York.
 10 Defendant Hawtin regularly does business in the United States, including the District and
 11 the State of California.

12 4. Plaintiff is informed and believes that Defendant Gavin Lynch (herein “Defendant
 13 Lynch”) is a resident of the Republic of Ireland who regularly does business in the United
 14 States, including the District and the State of California. Defendant Lynch records and
 15 performs music under the pseudonym “Matador”, among other names relevant herein.
 16

17 **JURISDICTION AND VENUE**

18 5. This is a civil action seeking damages and injunctive relief for copyright infringement
 19 under the copyright laws of the United States (17 U.S.C. § 101 et seq.).

20 6. This Court has jurisdiction under 17 U.S.C. § 101 et seq.; 28 U.S.C. § 1331 (federal
 21 question); and 28 U.S.C. § 1338(a) (copyright).

22 7. This Court has personal jurisdiction over Defendant Minus and venue in this District is
 23 proper under 28 U.S.C. § 1391(b) and 28 U.S.C. § 1400(a), in that Defendant Minus
 24 regularly conducts business in this District including, without limitation, in the form of
 25 record sales, digital music sales, and organizing or procuring live performances for artists
 26 on its roster, and the acts of infringement complained of herein occurred in this District.

27 8. In the alternative, this Court has personal jurisdiction over Defendant Minus under Fed.
 28 R. Civ. P. 4(k)(2) because this action arises under federal law, Defendant Minus is not

subject to jurisdiction in any state's courts of general jurisdiction, and the exercise of jurisdiction over Defendant Minus is consistent with the Constitution and the laws of the United States.

9. This Court has personal jurisdiction over Defendant Hawtin and venue in this District is proper under 28 U.S.C. § 1391(b) and 28 U.S.C. § 1400(a), in that Defendant Hawtin regularly conducts business in this District including, without limitation, in the form of record sales, digital music sales, and live performances, and the acts of infringement complained of herein occurred in this District. Plaintiff is also informed and believes that Defendant Hawtin owns real property in the District.

10. In the alternative, this Court has personal jurisdiction over Defendant Hawtin under Fed. R. Civ. P. 4(k)(2) because this action arises under federal law, Defendant Hawtin is not subject to jurisdiction in any state's courts of general jurisdiction, and the exercise of jurisdiction over Defendant Hawtin is consistent with the Constitution and the laws of the United States.

11. This Court has personal jurisdiction over Defendant Lynch and venue in this District is proper under 28 U.S.C. § 1391(b) and 28 U.S.C. § 1400(a), in that Defendant Lynch regularly conducts business in this District including, without limitation, in the form of record sales, digital music sales, and live performances, and the acts of infringement complained of herein occurred in this District.

12. In the alternative, this Court has personal jurisdiction over Defendant Lynch under Fed. R. Civ. P. 4(k)(2) because this action arises under federal law, Defendant Lynch is not subject to jurisdiction in any state's courts of general jurisdiction, and the exercise of jurisdiction over Defendant Lynch is consistent with the Constitution and the laws of the United States.

FACTS COMMON TO ALL COUNTS

13. Defendant Minus is an international record label and music company.

14. Defendant Hawtin is the principal and head executive of Defendant Minus.

1 15. Defendant Lynch is a musician and artist who serves on Defendant Minus's roster of
2 musicians and roster. Plaintiff is informed and believes that Defendant Minus and
3 Defendant Lynch owe each other fiduciary duties as label and artist, which specific duties
4 will be determined during the litigation process and discovery tools Plaintiff will have
5 access to.

6 16. As Defendant Lynch's record label, Defendant Minus is contributorily liable for any
7 illegal or unlawful actions taken by Defendant Lynch.

8 17. Plaintiff is the sole author and exclusive owner of any right to copyright in the
9 composition entitled "Gravitational Arch of 10" (the "Composition").

10 18. Plaintiff is also the sole author and exclusive owner of any right to copyright in any and
11 all audio recordings based the Composition, including the original audio recording made
12 in 1993 and also entitled "Gravitational Arch of 10" (the "Recording").

13 19. Plaintiff has registered his rights to copyright in the Composition and Recording with the
14 U.S. Copyright Office and is entitled to all rights and privileges of U.S. copyright law,
15 U.S.C. Title 17. The registration numbers include SR0000751604 and SR0000752576
16 (collectively the "Registration").

17 20. In the 1990s, Plaintiff had formal and informal business relationships with both
18 Defendant Minus (and previous, antecedent, and/or related business entities and/or
19 licensees/assignees) and Defendant Hawtin, individually. The relationship eventually
20 soured due to Defendant Hawtin's and Defendant Minus' business practices and personal
21 tactics. Plaintiff eventually settled various claims against Defendant Hawtin, Defendant
22 Minus, and all related business entities (including entities Plus 8 Records and London
23 Records) in a global settlement dated 10 October 1997 (the "Global Settlement").

24 21. The Global Settlement clarified that Plaintiff owned all rights and was the sole author to
25 all compositions and recordings created by him, including the Composition and
26 Recording, whether or not Defendant Minus or Defendant Hawtin had any valid
27 ownership rights. In the event that either Defendant Minus or Defendant Hawtin had any
28 valid ownership rights, all related entities agreed to assign such rights back to Plaintiff in

1 perpetuity.

2 22. Defendant Hawtin continued to contact Plaintiff in various personal or arms-length
3 encounters in the 1990s and into the 2000s against Plaintiff's interest in being contacted.
4 Plaintiff has historically lacked the resources to bring various valid lawsuits against
5 Defendant Hawtin and Defendant Minus.

6 23. On April 1, 2014, an agent and/or employee of Plaintiff Minus named Mr. Philip
7 Soeffker, contacted Plaintiff's attorneys to request a sample license for the Composition
8 and Recording. Mr. Soeffker stated that the sample of the Composition and Recording
9 would be used in a mix by Defendant Lynch entitled "ENTER.2014 Mix-CD" (herein
10 "ENTER Mix") to be distributed by Defendant Minus.

11 24. Also on April 1, 2014, Mr. Soeffker provided Plaintiff and his attorneys an online version
12 of Defendant Lynch's then-current edit of the ENTER Mix, which included both the
13 Composition and Recording. Plaintiff is able to provide this audio recording to the court
14 upon request (the "Original Edit").

15 25. The Original Edit contained a large portion of both the Composition and the Recording
16 and any use would violate one or more of Plaintiff's exclusive rights under U.S.C. Title
17 17 to the Composition and Recording.

18 26. Importantly, Mr. Soeffker's email demonstrated that Defendant Minus, Defendant
19 Hawtin (as Defendant Minus' principal and head executive), and Defendant Lynch
20 understood and had actual knowledge that Plaintiff owned and administered all rights to
21 the Composition and Recording, otherwise Defendant Minus would not have contacted
22 Plaintiff's attorneys. Any use of the Composition and/or Recording would have required
23 Plaintiff's written permission, which was never provided.

24 27. Defendant Minus and Defendant Hawtin also had actual notice of Plaintiff's sole,
25 exclusive rights to the Composition and Recording because of the Global Settlement.

26 28. On April 4, 2014, Plaintiff's attorneys responded to Defendant Minus by emailing Mr.
27 Soeffker and expressly denying the license request in no uncertain terms, stating that
28

1 Plaintiff was unwilling to license the Composition and/or Recording for any reason (the
2 “Denial Email”).

3 29. After the Denial Email, Defendant Minus, Defendant Hawtin, and Defendant Lynch (as
4 represented by Minus) had actual notice of Plaintiff’s refusal to license the Composition
5 and/or Recording.

6 30. Despite being denied the license or any permission to use the Composition and/or
7 Recording, Defendant Minus and Defendant Lynch made the brazen and illegal decision
8 to reproduce, distribute, and publicly perform a version of the Original Edit on BBC
9 radio, BBC online radio, Soundcloud, and other online distribution channels and/or
10 streaming platforms.

11 31. As early as July 2014, if not sooner, Plaintiff also learned that the Original Edit (in its
12 exact form as submitted to Plaintiff’s attorneys in April 2014) was circulating the Internet
13 on various websites, torrent aggregators, and other online distribution channels or
14 platforms.

15 32. Plaintiff is informed and believes that Defendants, and each of them, are responsible for
16 distribution the Original Edit to the public as there is no evidence of any third party other
17 than the Defendants having access to the Original Edit. Neither Plaintiff nor his attorneys
18 ever distributed the Original Edit after initially listening to it. Plaintiff believes he will be
19 able to prove that Defendants, and each of them, distributed the Original Edit with the
20 tools available to Plaintiff in the litigation process, including discovery.

21 33. While the Original Edit was not included on the “ENTER Mix”, which was distributed to
22 the public via traditional channels such as brick-and-mortar record stores and online
23 stores, Defendant Lynch played a version of the Original Edit on BBC radio. This version
24 shall be referred herein as the “Radio Edit”. The Radio Edit contained minimal changes
25 besides a radio-friendly introduction by Defendant Lynch using his own voice and a
26 slightly different “fade-out” only noticeable to music specialists.

27 34. Plaintiff believes, is informed, and on that basis alleges that Defendant Hawtin instructed
28 Defendant Lynch to release the Radio Edit on BBC radio knowing that Plaintiff would

not have the ability to control the distribution due to the complex set of laws governing international performing rights societies and terrestrial radio stations. Instead, Plaintiff could at best collect royalties from Defendant Lynch's performance of the Radio Edit.

35. However, Defendant Lynch also posted the Radio Edit on his professional Soundcloud page for "Matador" and proceeded to illegally distribute both the Composition and Recording to the public, free of charge, and in the process made illegal duplications of the Composition and Recording. Once posted on Defendant Lynch's professional Soundcloud page, the Radio Edit also began to be widely distributed throughout the Internet. Screenshots demonstrating the existence of the Radio Edit (and the existence of the Composition and Recording therein) on Defendant Lynch's professional Soundcloud page are collectively attached hereto as "Exhibit A".

36. Plaintiff believes that Defendant Minus and/or Defendant Hawtin instructed and/or encouraged Defendant Lynch to illegally distribute the Composition and Recording, or knowingly allowed Defendant Lynch — one of Defendant Minus' artists — to do so.

37. Plaintiff attempted settlement discussions with each of the Defendants and each of their representatives in December 2014 and again in January 2015, February 2015, and March 2015 but none of them would engage in serious discussions.

COUNT I

INFRINGEMENT OF COPYRIGHTS IN THE "RECORDING"

38. Plaintiffs incorporate herein by this reference each and every allegation contained in each paragraph above.

39. Plaintiff is, and at all relevant times has been, the copyright author and owner of exclusive rights under United States and international copyright law with respect to that particular copyrighted sound recording entitled "Gravitational Arch of 10". Valid Copyright Registration certificates have been issued by the U.S. Register of Copyrights with the registration numbers: SR0000751604 and SR0000358423.

40. Among the exclusive rights granted to Plaintiff under the Copyright Act are the exclusive

1 rights to reproduce the Copyrighted Recording, to publicly perform, to create derivative
2 versions of the Copyrighted Recording, and to distribute the Copyrighted Recording to
3 the public.

4 41. Plaintiff is informed and believes that Defendants, without the permission or consent of
5 Plaintiff, has used, and continues to use, an online media distribution system to download
6 the Copyrighted Recording, to distribute the Copyrighted Recording to the public, to
7 make derivate version(s) of the Copyrighted Recording, to distribute the derivative
8 version(s) of the Copyrighted Recording to the public, and/or to make the Copyrighted
9 Recordings available for distribution to others. In doing so, each Defendant has violated
10 Plaintiff's exclusive rights of reproduction and distribution, as well as public performance
11 and the exclusive right to create a derivative version. Defendants' actions, individually
12 and collectively, constitute infringement of Plaintiff's copyrights and exclusive rights
13 under copyright.

14 42. Plaintiff is informed and believes that the foregoing acts of infringement have been
15 willful and intentional, in disregard of and with indifference to the rights of Plaintiffs.
16 Each of the Defendants, individually and collectively, had actual or constructive
17 knowledge of Plaintiff's exclusive rights and ownership over the Copyrighted Recording,
18 which is demonstrated by Defendant Minus' request for a license of the Copyrighted
19 Recording in April 2014. Despite this actual knowledge, and despite Plaintiff's express,
20 written refusal to license the Copyrighted Recording in any way, each of the Defedants
21 proceeded to violated Plaintiff's exclusive rights as set forth above. These willful,
22 intentional, and illegal violations should receive the maximum statutory penalties
23 available under United States law.

24 43. As a result of Defendants' individual and collective infringement of Plaintiff's copyrights
25 and exclusive rights under copyright, Plaintiff is entitled to statutory damages pursuant to
26 17 U.S.C. § 504(c) for Defendants' individual and collectively infringement of the
27 Copyrighted Recording. Plaintiffs further are entitled to their attorneys' fees and costs
28 pursuant to 17 U.S.C. § 505.

1 44. The conduct of Defendants, individually is and collectively are causing and, unless
 2 enjoined and restrained by this Court, will continue to cause Plaintiff great and
 3 irreparable injury that cannot fully be compensated or measured in money. Plaintiff has
 4 no adequate remedy at law. Pursuant to 17 U.S.C. §§ 502 and 503, Plaintiff is entitled to
 5 injunctive relief prohibiting Defendant from further infringing Plaintiff's copyrights, and
 6 ordering Defendant to destroy all copies of sound recordings and any derivative versions
 7 thereof made in violation of Plaintiff's exclusive rights.

8 9 COUNT II

10 INFRINGEMENT OF COPYRIGHTS IN THE "COMPOSITION"

11 45. Plaintiffs incorporate herein by this reference each and every allegation contained in each
 12 paragraph above.

13 46. Plaintiff is, and at all relevant times has been, the copyright author and owner of
 14 exclusive rights under United States and international copyright law with respect to that
 15 particular copyrighted musical work of the performing arts entitled "Gravitational Arch
 16 of 10". Valid Copyright Registration certificates have been issued by the U.S. Register of
 17 Copyrights with the registration numbers: SR0000751604 and SR0000358423.

18 47. Among the exclusive rights granted to Plaintiff under the Copyright Act are the exclusive
 19 rights to reproduce the Copyrighted Composition, to publicly perform, to create
 20 derivative versions of the Copyrighted Composition, and to distribute the Copyrighted
 21 Composition to the public.

22 48. Plaintiff is informed and believes that Defendants, without the permission or consent of
 23 Plaintiff, has used, and continues to use, an online media distribution system to download
 24 a version of the Copyrighted Composition, to distribute the Copyrighted Composition to
 25 the public in the form of the Copyrighted Recording, to make derivate version(s) of the
 26 Copyrighted Composition without permission (but not including so-called "cover"
 27 versions), to distribute the derivative version(s) of the Copyrighted Composition to the
 28 public, and/or to make the Copyrighted Composition available for distribution to others.

1 In doing so, each Defendant has violated Plaintiff's exclusive rights of reproduction and
2 distribution, as well as public performance and the exclusive right to create a derivative
3 version. Defendants' actions, individually and collectively, constitute infringement of
4 Plaintiff's copyrights and exclusive rights under copyright.

5 49. Plaintiff is informed and believes that the foregoing acts of infringement have been
6 willful and intentional, in disregard of and with indifference to the rights of Plaintiffs.
7 Each of the Defendants, individually and collectively, had actual or constructive
8 knowledge of Plaintiff's exclusive rights and ownership over the Copyrighted
9 Composition, which is demonstrated by Defendant Minus' request for a license of the
10 Copyrighted Composition in April 2014. Despite this actual knowledge, and despite
11 Plaintiff's express, written refusal to license the Copyrighted Composition in any way,
12 each of the Defendants proceeded to violated Plaintiff's exclusive rights as set forth
13 above. These willful, intentional, and illegal violations should receive the maximum
14 statutory penalties available under United States law.

15 50. As a result of Defendants' individual and collective infringement of Plaintiff's copyrights
16 and exclusive rights under copyright, Plaintiff is entitled to statutory damages pursuant to
17 17 U.S.C. § 504(c) for Defendants' individual and collectively infringement of the
18 Copyrighted Composition. Plaintiffs further are entitled to their attorneys' fees and costs
19 pursuant to 17 U.S.C. § 505.

20 51. The conduct of Defendants, individually is and collectively are causing and, unless
21 enjoined and restrained by this Court, will continue to cause Plaintiff great and
22 irreparable injury that cannot fully be compensated or measured in money. Plaintiff has
23 no adequate remedy at law. Pursuant to 17 U.S.C. §§ 502 and 503, Plaintiff is entitled to
24 injunctive relief prohibiting Defendant from further infringing Plaintiff's copyrights, and
25 ordering Defendant to destroy all copies of sound recordings and any derivative versions
26 thereof made in violation of Plaintiff's exclusive rights.

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28 //

PRAYER

WHEREFORE, Plaintiffs pray for judgment against Defendant as follows:

1. For an injunction providing:

“Defendants individually and collectively shall be and hereby is/are enjoined from directly or indirectly infringing Plaintiff’s rights under federal or state law in the Copyrighted Recording and Copyrighted Composition and any sound recording or music work or composition, whether now in existence or later created, that is owned or controlled by Plaintiff (“Plaintiff’s Works”), including without limitation by using the Internet or any online media distribution system to reproduce (i.e., download or stream) any of Plaintiff’s Works, to distribute (i.e., upload or stream) any of Plaintiff’s Works, to make derivative versions of Plaintiff’s Works, or to make any of Plaintiff’s Works available for distribution to the public, except pursuant to a lawful license or with the express authority of Plaintiff. Defendant also shall destroy all copies of Plaintiff’s Works that Defendants, individually or collectively, has/have downloaded onto any computer hard drive or server without Plaintiff’s authorization and shall destroy all copies of those downloaded recordings transferred onto any physical medium or device in Defendant’s possession, custody, or control.”

2. For the maximum statutory damages for each infringement of each Copyrighted Recording pursuant to 17 U.S.C. § 504 in the amount of at least \$150,000.00 given the pervasive and long-standing evidence of bad faith, intentional conduct, and willful infringement conduct.

3. For the maximum statutory damages for each infringement of each Copyrighted Composition pursuant to 17 U.S.C. § 504 in the amount of at least \$150,000.00 given the pervasive and long-standing evidence of bad faith, intentional conduct, and willful infringement conduct.

4. For Plaintiff’s costs in this action.

5. For Plaintiff’s reasonable attorneys’ fees incurred herein.

1 6. For such other and further relief as the Court may deem just and proper.

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3 DATED: April 2, 2015

GARLAND LAW, PC

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5
6 BY:  _____

7 Kevin M. Garland, Esq.

8 Garland Law, PC

9 Attorney for Plaintiff,

10 Mark Gage
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